

43

STANDING COMMITTEE ON FINANCE

(2011-12)

FIFTEENTH LOK SABHA

**Ministry of Finance
(Department of Financial Services)**

The Banking Laws (Amendment) Bill, 2011

FORTY THIRD REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2011/ Agrahyana, 1933 (Saka)

FORTY THIRD REPORT

**STANDING COMMITTEE ON FINANCE
(2011-2012)**

(FIFTEENTH LOK SABHA)

**Ministry of Finance
(Department of Financial Services)**

The Banking Laws (Amendment) Bill, 2011

Presented to Lok Sabha on 13 December, 2011

Laid in Rajya Sabha on 13 December, 2011



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2011/ Agrahyana, 1933 (Saka)

CONTENTS

	Page No.
Composition of the Committee	(iii)
Introduction	(iv)

REPORT

Sl. No.	Topic	
1.	Background	1
	(i) The basic features of the Bill	2
	(ii) Comparative Statement of provisions of the Banking Regulation (Amendment) Bill, 2005 vis-a-vis the Banking Laws (Amendment) Bill, 2011	3
	(iii) Additional amendments in the Banking Laws (Amendment) Bill, 2011 which were not part of the Banking Regulation (Amendment) Bill, 2005	7
	(iv) Rationale for bringing the amendments	7
2.	(A) Banking Mergers to remain outside the purview of Competition Commission of India	8
	(B) Voting Rights	11
	(C) Depositor Education and Awareness Fund	15
	(D) Definition of Associated Enterprises	17
	(E) Supersession of Board of Directors of Banking Company- Appointment of Administrator	19

APPENDICES

I.	Note of Dissent submitted by Shri Moinul Hassan, MP.....	
II.	Minutes of the sittings of the Committee held on 14 July, 2011, 29 July, 2011 and 8 December, 2011.....	
III.	The Banking Laws (Amendment) Bill, 2011.....	

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-2012

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

RAJYA SABHA

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Yogendra P. Trivedi

SECRETARIAT

- | | | |
|---------------------------------|---|------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri R.K. Jain | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |

(iii)

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorised by the Committee, present this Forty-third Report on the Banking Laws (Amendment) Bill, 2011.

2. The Banking Laws (Amendment) Bill, 2011, introduced in Lok Sabha on 22 March, 2011 was referred to the Committee on 29 March, 2011 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Financial Services).

4. Written views/memoranda were received from the Reserve Bank of India, State Bank of India, Indian Banks Association, Bank of Baroda, Syndicate Bank, Canara Bank, Vijaya Bank, Indian Bank, Corporation Bank, Oriental Bank of Commerce, Bank of India ICICI Bank, IDBI Bank, Indus Ind Bank, Bank Employees' Federation of India (BEFI), All India Bank Employees' Association (AIBEA), All India Bank Officers' Association (AIBOA), and All India Bank Officers' Confederation (AIBOC).

5. The Committee, at their sitting held on 14 July, 2011 took evidence of the representatives of the Ministry of Finance (Department of Financial Services) and Indian Banks' Association (IBA).

6. The Committee, at their sitting held on 8 December, 2011 considered and adopted this Report.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Financial Services) and the representatives of Indian Banks' Association (IBA) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Reserve Bank of India, State Bank of India, Bank of Baroda, Syndicate Bank, Canara Bank, Vijaya Bank, Indian Bank, Corporation Bank, Oriental Bank of Commerce, Bank of India, ICICI Bank, IDBI Bank, Indus Ind Bank, Bank Employees' Federation of India (BEFI), All India Bank Employees' Association (AIBEA), All India Bank Officers' Association (AIBOA), and All India Bank Officers' Confederation (AIBOC) for placing before them their considered views on the Bill in the form of memoranda.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
09 December, 2011
18 Agrahayana, 1933 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance

Report

Background

The Banking Regulation Act, 1949 being the law relating to banking has been in force for more than six decades. It, *inter alia*, empowers the Reserve Bank to regulate and supervise the banking sector. The Reserve Bank of India (RBI) has asked the Government to move certain legislative amendments to not only develop the banking sector in India, but also strengthen its regulatory powers. The legislative amendments in the Bill relating to strengthening of RBI's regulatory and supervisory powers are thus proposed by way of amendments to the Banking Regulation Act, 1949. Further, other consequential amendments are also proposed in Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and 1980 to grant greater flexibility to nationalised banks in raising capital to meet the requirements of expanding banking business.

2. The Banking Regulation (Amendment) Bill, 2005 (72 of 2005) was introduced in the Lok Sabha on the 13th May, 2005 to strengthen RBI's supervisory and regulatory powers over the banking sector. The Bill was referred to the Standing Committee on Finance for examination and report thereon in the year 2005 and based on the recommendations of the Standing Committee, the Government decided to move official amendments to the Bill in the Lok Sabha, but the Bill could not be taken up for consideration and passing in the 14th Lok Sabha and after the dissolution of the Lok Sabha, the Bill lapsed.

3. The present Bill *inter-alia* incorporates certain provisions of the Banking Regulation (Amendment) Bill, 2005.

(i) The basic features of the Bill

4. The salient features of the Bill are as follows:

- To exempt bank mergers from scrutiny of the Competition Commission of India;
- To enable banking companies to issue preference shares subject to regulatory guidelines by the RBI;
- To remove the restrictions on voting rights for private banks and raise the ceiling to 10% for public sector banks on par with State Bank of India;
- To create a Depositor Education and Awareness Fund by utilising the inoperative deposit accounts;
- To provide prior approval of RBI for acquisition of 5% or more of shares or voting rights in a banking company by any person and empowering RBI to impose such conditions as it deems fit in this regard;
- To empower RBI to collect information and inspect associate enterprises of banking companies;
- To empowering RBI to supersede the Board of Directors of banking company and appointment of administrator till alternate arrangements are made;
- To provide for primary cooperative societies to carry on the business of banking only after obtaining a license from RBI;
- To provide for special audit of cooperative banks at instance of RBI by extending applicability of section 30 to them; and
- To enable the nationalised banks to raise capital through “bonus” and “rights” issue and also enable them to increase or decrease the authorised capital with approval from the Government and RBI without being limited by the ceiling of Rs. 3000 crore under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.

(ii) Comparative Statement of provisions of the Banking Regulation (Amendment) Bill, 2005 vis-a-vis the Banking Laws (Amendment) Bill, 2011

5. The provisions of the Banking Laws (Amendment) Bill, 2011 incorporate almost all the recommendations/ amendments suggested by the Standing Committee on Finance in its 26th Report on the Banking Regulation (Amendment) Bill, 2005 with suitable modifications required in the present day circumstances and other consequential amendments in the Banking Regulation Act, 1949. The tabular statement given below shows in detail the recommendations of the Standing Committee on Finance in its 26th Report on the Banking Regulation (Amendment) Bill, 2005 and how these have been incorporated in the Banking Laws (Amendment) Bill, 2011. The table also gives in detail additional amendments which were not part of the Banking Regulation (Amendment) Bill, 2005.

Comparative Statement indicating provisions as originally proposed in the Banking Regulation (Amendment) Bill, 2005 and the Recommendations made by the Standing Committee on Finance and incorporation of the Recommendations of the Standing Committee of Finance in the Banking Laws (Amendment) Bill, 2011.

Provision in the Banking Regulation (Amendment) Bill, 2005	Recommendations of the Standing Committee on Finance	Incorporation of the recommendation of the Standing Committee on Finance in the Banking Laws (Amendment) Bill, 2011
Clause 3 Section 12 (i) For clause (ii), the following clause shall be substituted, namely;-	The standing Committee on Finance observed that the Government may consider bringing in	Clause 4 of the Bill incorporates the recommendations of the Standing

<p>“(ii) that notwithstanding anything contained in the Companies Act, 1956, the capital of such banking company consists of-</p> <p>(a) ordinary or equity shares, and</p> <p>(b) Preference shares issued in accordance with the guidelines framed by the Reserve Bank specifying the class of, and the terms and conditions subject to which, the preference shares may be issued;</p> <p>Provided that no holder of the preference share issued by the company shall be entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956”;</p> <p>(iii) The proviso shall be omitted.</p> <p>(iv) Sub-section (2) shall be omitted.”</p>	<p>such changes in the proposed provisions to also clearly indicate the fact that the extent to which a banking company may issue preference shares of a particular description would be specified by the Reserve Bank.</p>	<p>Committee on Finance as follows:</p> <p>4. In section 12 of the principal Act, in sub-section (1),-</p> <p>(i) for clause (ii), the following clause shall be substituted, namely:—</p> <p>“(ii) that, notwithstanding anything contained in the Companies Act, 1956, the capital of such banking company consists of—</p> <p>(a) equity shares only, or</p> <p>(b) equity shares and preference shares:</p> <p>Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares, (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued:</p> <p>Provided further that no holder of the preference share, issued by the company, shall be</p>
---	--	--

		<p>entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956”;</p> <p>(ii) the proviso shall be omitted;</p> <p>(iii) sub-section (2) shall be omitted.</p>
<p>Clause 4 Section: Sub-section (6) of 12B</p> <p>(6) Every application made under sub-section (1) shall be deemed to have been granted, unless before the expiry of a period of ninety days from the date on which the application was received by the Reserve Bank, it communicates to the applicant that the approval applied for has not been granted:</p> <p>Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be executed.</p>	<p>The Committee, recommended that clause 12 B (6) be amended suitably to specify in clear terms that the decision of either accepting or rejecting an application for acquisition of shares under sub-section (1) of Section 12B will necessarily be taken and conveyed by the Reserve Bank within the stipulated period of 90 days.</p>	<p>Sub-clause (6) of Clause 12B of the Bill is as follows:</p> <p>(6) The decision of the Reserve Bank on the application made under sub-section (1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank:</p> <p>Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.</p>
<p>Clause 5 Section: 20</p> <p>“(6) The Reserve Bank may, subject to such conditions as may be specified, grant to any banking company exemption from the provisions of this section</p>	<p>The Committee, therefore, strongly recommend that instead of pursuing the present proposal to ease the restrictions, the Government should</p>	<p>There is no such proposal in the present Bill to allow exemption from the provisions of the section 20 which prohibits “connected lending.”</p>

<p>in regard to any restriction on entering into any commitment for granting any loan or advance to any company referred to in sub-clause (iii) of clause (b) of sub-section (1).”</p>	<p>reintroduce the proposals made in the earlier Bill of 2003, to specifically debar banks from granting any loan or advance to relatives of Directors on their Boards and prohibit “connected lending”.</p>	
<p>Clause 8 Section: 36 ACA</p> <p>(2) The Reserve Bank may, on supersession of Board of Directors of the Banking company under sub-section (1), appoint an Administrator for such period as it may determine.</p> <p>(5) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in the discharge of his duties.</p>	<p>Though the Ministry has informed that selection of Administrator would be from persons having experience in law fiancé, banking, administration or accountancy, the Committee feels that the qualifications required to be met should be confined to experience in the fields of law, finance, banking and accountancy only and no bureaucrat should be chosen for the assignment. The Committee, accordingly, recommends that appropriate changes be made in the provisions to indicate the qualifications of the administrator.</p>	<p>Sub-clause (2) of Clause 11 of the Bill provides for appointment of an Administrator for a banking company whose Board of Directors has been superseded in certain cases by Reserve Bank.</p> <p>(2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.</p>

(iii) Additional amendments in the Banking Laws (Amendment) Bill, 2011 which were not part of the Banking Regulation (Amendment) Bill, 2005

New Section	Provision
2A	To exempt matters relating to amalgamation, reconstruction, transfer, reconstitution of acquisition of Banking companies from the applicability of the provisions of the Companies Act, 2002.
Amendment of Section 13.	To amend Section 13 to relax the ceiling on commission, brokerage, discount and remuneration for issue of shares such that this ceiling is fixed with reference to the price at which the shares are issued instead of the paid up value.
26A	To create a Depositor Education and Awareness Fund to takeover inoperative deposit accounts of banks which have not been operated for more than 10 years and to provide for mode of operation of the Fund to be regulated by Reserve Bank.
Amendments of Sections 46 and 47A	To increase the amount of penalty for violations of the Act.
Amendment of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.	To grant additional flexibility to nationalised banks to raise capital.

(iv) Rationale for bringing the amendments

7. ■ Certain amendments have been proposed to the Banking Regulation Act, 1949 to not only develop the banking sector in India, but also strengthen its regulatory powers.
- Some of the regulatory powers, such as, power of prior approval to shareholding of 5% or more to only “fit and proper” shareholders of private banks, power of supersession of board of private sector banks and consolidated supervision over “associates” and “subsidiaries” of banking companies, may be required for grant of new banking licenses to private

sector banks (including Industrial Houses and Subsidiary of holding companies) by RBI.

- The voting rights of shareholders of private sector banks would be equal to that of shareholding rights. This, coupled with the power to issue preference shares, would enable the private sector banks to access capital for further development of banking business.
- The exemption of bank mergers etc. from the scrutiny of the Competition Commission of India (CCI) would allow RBI to approve bank mergers in public /depositors' interest, in the interest of the banking system in India and to secure the proper management of the banking company in a timely manner without waiting for approval of the CCI.
- The additional flexibility proposed to be granted to nationalised banks would allow them to raise regulatory capital to meet the growing business requirements.

8. The Banking Laws (Amendment) Bill, 2011 was introduced in Lok Sabha on 22 March, 2011 and referred to Standing Committee on Finance for examination and report on 24 March, 2011. The Committee invited views/suggestions of various banks, RBI and employees associations on the various/provisions of the Bill. They also took evidence of the representatives of the Ministry of Finance (Department of Financial Services) on the amendment proposals of the Bill. After their deliberations, the Committee have approved the Bill with certain modifications and comments as brought out in succeeding paras.

(A) **Banking Mergers to remain outside the purview of Competition Commission of India**

9. **Clause 2 of the Bill proposes insertion of a new Section after Section 2 of the principal Act i.e. the Banking Regulation Act, 1949 which reads as below :**

“After section 2 of the Banking Regulation Act, 1949 (hereinafter in this Chapter referred to as the principal Act), the following section shall be inserted, namely:—

“2A. Notwithstanding anything to the contrary contained in section 2, nothing contained in the Competition Act, 2002 shall apply to any banking company, the State Bank of India, any subsidiary bank, any corresponding new bank or any regional rural bank or co-operative bank or multi-state co-operative bank in respect of the matters relating to amalgamation, merger, reconstruction, transfer, reconstitution or acquisition under—

(i) this Act;

(ii) the State Bank of India Act, 1955;

(iii) the State Bank of India (Subsidiary Banks) Act, 1959;

(iv) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(v) the Regional Rural Banks Act, 1976;

(vi) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

(vii) the Multi-State Co-operative Societies Act, 2002; and

(viii) any State law relating to co-operative societies”.

10. Justifying the above proposal, the representatives of the Department of Financial Services submitted *inter-alia* as under :

“Banking is some kind of an entity and the trust of people on the banking system is paramount. There are times when decisions have to be taken very quickly. Competition Commission’s procedures gives sometime for scrutiny and for decision to be taken. Our financial sector in some sense is getting strengthened and it would take sometime to find them as quick to be US or EU kind of a system. So after great deliberations the Government took the view that we will keep the mergers and acquisitions of banks with the RBI. Obviously, when time demands, we will revisit. For the time being, the Government’s careful consideration is that it remains with the RBI so that we are in a position to ensure the safety, security, trust and confidence of people in the banking system are maintained. Today, until the financial system becomes very strong we need to ensure that the depositors, the customers and stakeholders in the system retain their faith in the financial system of the Government. So, the best way is

to keep it within the confines of the Reserve Bank of India. Otherwise, all issues would be published, everything would come into public domain, people would think this is unsafe, and the confidence in the system would be shaken and it would become a run on the bank, not only on one but on other banks also. So, a kind of stability should be provided.

11. Further on this issue, they elaborated as follows :

“There is a procedure under the existing Competition Act for a certain period of time when application is given should be in the public domain, some investigation has to be made, after investigation, the same has to be proposed to the Commission Members; they have to scrutinize -it can take a good amount of time”.

“Hon’ble Members are aware, I know, that certain mergers have been done with an overnight kind of a focus and it has stood the test of time because the confidence of the people in the financial system got restored as a result of such actions were taken. So, that is the reason. Let me look at the NPAs, the financial stability, those kinds of things-unless we come to that mature level, it will take some more time to get into that.”

12. The Committee, while supporting the Government’s proposal to keep bank mergers etc., outside the purview of Competition Commission of India for the time being, would recommend that this exemption should be considered as a special case and an expedient measure to be revisited in due course in the light of experience gained by both the regulators in question, namely the RBI and the Competition Commission of India. This however does not in any manner convey the Committee’s views on mergers or acquisition policy in banking sector as such, which is an issue meriting a separate discourse.

(B) **Voting Rights**

13. Clause 4 of the Bill proposes amendment of Section 12 of the principal Act i.e. the Banking Regulation Act, 1949 which includes omission of the sub-section (2) of Section 4 of the Act which reads as below :-

“No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights on poll in excess of ten per cent of the total voting rights of all the shareholders of the banking company”.

Clause 5 of the Bill also proposes insertion of a new Section after Section 12A of the principal Act which inter-alia reads as below :

“12B. (1) No person (hereinafter referred to as “the applicant”) shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent or more of the paid-up share capital of such banking company or entitles him to exercise five per cent or more of the voting rights in such banking company”.

(4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.

(5) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (i) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.

(8) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the

aggregate, exercise voting rights on poll in excess of five per cent. of the total voting rights of all the shareholders of the banking company.

14. In their 26th Report on the earlier Bill of 2005, the Committee vide para 27 had made their observation on the issue of proportionate voting rights as reproduced hereunder:

The Committee note that placing a limitation on the exercise of voting rights of share holders of private sector banks, which stands at 10% at present, was necessitated owing to the likely problems of credit concentration and credit diversion that had beset the banking system prior to nationalization. The proposal of the present Bill to do away with the restrictions and permit proportionate voting rights to the promoters/shareholders is in consonance with the principles of Company Law. While addressing the issue of impact of the proposal to do away with the restrictions on voting rights as contained in the earlier Bill that lapsed viz., the Banking Regulation (Amendment) Bill, 2003, the Committee had, in the related report (Forty-Seventh Report; Thirteenth Lok Sabha) *inter-alia* observed that the move would pave way for a process of consolidation in Indian private banks and also lead to setting up of subsidiaries of foreign banks. The Committee reiterate the opinion expressed in the earlier report that allowing proportionate voting rights to shareholders would provide greater opportunities for investors. The Committee, however, note that the main concerns relating to the proposals to do away with the restrictions presently applicable on exercise of voting rights centered on the possibility of concentration of power or shareholding in the hands of a single entity or a conglomerate. The legal and regulatory measures available, or proposed, to address such concerns, as informed by the Ministry include, the move to incorporate Section 12B in the principal Act as per which acquisition of 5% or more of shareholding in a banking company would require the prior approval of Reserve Bank; the ceiling limits applicable on foreign holding in banks; and mandatory requirement of acknowledgement of the Reserve Bank for effecting any transfer of shareholding in excess of 5%. **The Committee trust and hope that the Reserve Bank would ensure that the legal and regulatory mechanism is adequate and complied with strictly so that no scope is left for possible misuse of the provisions relating to permitting proportionate voting rights to shareholders.**

15. Explaining the logic of lifting the ceiling on voting rights in respect of private sector banks, the representatives of the Ministry submitted as under :

“The removal off restrictions on voting rights on the shares of private sector banks would facilitate them in raising regulatory capital from the capital market as the shareholders would like to have appropriate control on the management of the banking company. The public sector banks have shareholding restrictions while private sector banks have no such restrictions. So, both categories of banks are not on the same footing. For example, while foreign investment upto 74% of the shareholding is permitted in the case of private sector banks, the foreign investment ceiling for public sector banks is 20% of the shareholding. Further, the Government shareholding in public sector bank by definition cannot go below 51%, whereas in private sector banks, there is no such restriction. In view of the different shareholding restrictions for private sector banks vis-à-vis public sector banks, it is not appropriate to remove the restriction on voting rights for public sector banks. On the other hand, since private sector banks would be constantly in need of raising regulatory capital from the Capital Market on their own, their shares should appear to be attractive for prospective investors lest they should avoid investment in such banks”.

16. They further clarified the position on this issue as below :-

“There are four sets of legislations that basically cover all banking activity in the country. As far as public sector banks are concerned, there are two legislations; the Acquisition Act of 1970 and the Acquisition Act of 1980. In both these acts, there is a restriction of voting rights to only one per cent, irrespective of the number of shares held by an individual. It is sought by this Bill to increase that one per cent to ten per cent. So, we are enhancing the limit and bringing it at par with the State Bank of India where it is ten per cent. So, it increases from current one per cent to ten per cent. All public sector banks and State Banks will now have the ten per cent clause. As far as the Banking Regulation Act, 1940 is concerned, which primarily deals with the licensing and other issues of private banks, there is a current limit of ten per cent of the voting rights. The limit is sought to be removed. Now, in case of private sector banks, it will be equivalent to the number of shares”.

17. On the issue of non-voting rights, the representatives of Ministry of Finance (Department of Financial Services) expressed their view as under :-

“It is an issue which needs serious examination. One of the legal feedbacks that we have got is that introduction of the concept of non-voting rights would require a change in the basic structure of the Banking Regulation Act and the Acquisition and Nationalisation Acts because the

nature of government holding or public sector holding has been defined in terms of shareholding and not voting rights per se”.

18. With regard to the proposal for making the voting rights in private sector banks proportionate to shareholding, while removing the existing ceiling of 10 percent, the Committee feel that the Ministry may consider increasing the limit only to 26% from the existing 10% in order to keep a balance between conflicting factors underpinning the decision, namely concentration of economic power/control and promotion of corporate democracy. The Committee would also reiterate their earlier recommendation that the Reserve Bank of India must ensure that the regulatory mechanism is adequate and is strictly complied with so that no scope is left for possible misuse of this provision. As Reserve Bank of India has been entrusted with the mandate to grant approval for acquisitions, transfer, mergers etc. in the banking sector, the Committee would expect that the Reserve Bank of India would conduct due diligence of ‘fit and proper’ persons/entities (as per sub-clause 8 of Clause 5) and take sufficient safeguards while stipulating conditions as to credentials, source of funds, track record, financial inclusion etc. before granting approvals under this clause.

19. The Committee would also like the Government to consider the merits of issuing non-voting shares as an avenue to expand the capital base of banks without allowing concentration of management control in a few hands and which would also enable them to grow faster.

(C) **Depositor Education and Awareness Fund**

20. Clause 9 of the Bill proposes insertion of a new Section after Section 26 of the principal Act which reads as below :-

“After section 26 of the principal Act, the following section shall be inserted, namely:—

26A. (1) The Reserve Bank shall establish a Fund to be called the “Depositor Education and Awareness Fund” (hereafter in this section referred to as the “Fund”).

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

Providing that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking company shall be liable to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

(3) Where the banking company has paid outstanding amount referred to in subsection (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority or committee referred to in sub-section (5).

(4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes as may be specified by the Reserve Bank from time to time.

(5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.

(6) It shall be competent for the authority or committee appointed under subsection (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established”.

21. On the operation of Depositor Education and Awareness Fund and settlement of accounts beyond 10 years, the representatives of the Ministry stated as under :-

“This is the liability of a bank. That liability cannot be quashed. Even after 10 years a rightful person were to make a claim money has to be paid by the bank”.

On this issue, the representatives of the RBI clarified that :-

“We have issued detailed instructions to banks that wherever they find inoperative type of accounts they should write to customer in the last available address and try to follow it up. Also in the new accounts we are always telling that nomination facility is a must so that the legal heirs can easily access the funds”.

22. The Committee desire that the proposed Depositor Education and Awareness Fund should be created without compromising the rights and claims of depositors or their legal heirs, who should be able to secure their claims without difficulty. Depositors’ legal heirs should be informed before transfer of funds to Depositor Education Protection Fund. Further, it should be amply clarified that even after transfer to the fund, the bank would be liable to repay with interest claims of depositors within a period of one month of claim. RBI should also be mandated to refund the claimed amount under the fund immediately on demand from the concerned bank. In this context, the Government may also consider incorporating a similar provision for determining the fate of unclaimed articles under safe custody of the banking company or lying in the lockers, which have not been operated for more than certain period of time.

23. With regard to the issue that the Depositors Education and Awareness Fund shall be utilized for promotion of depositors interest and for “such other purposes” as may be specified by RBI from time to time as mentioned in sub-clause 4 of Clause 26(a), the representatives of IBA explained the rationale as :-

“The other purpose will take colour from the provisions of the Act. They will not be able to go beyond the purposes for which it is meant. For education of the depositor and awareness of the depositors, it can be used because the substantive provisions would restrict the other purpose for which it can be used”.

24. The Committee are of the view that the words “Other purpose” used in the Clause is too wide and broad and may needlessly lead to ambiguities on the deployment of funds. The Committee would therefore recommend that these words should be replaced with the words “incidental or ancillary to the promotion of depositor interest”. Amendments may thus be made accordingly.

(D) **Definition of Associated Enterprises**

25. Clause 10 of the Bill proposes insertion of a new Section after Section 29 of the principal Act which reads as below :-

“After section 29 of the principal Act, the following section shall be inserted, namely:—

29A. (1) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

(2) Notwithstanding anything to the contrary contained in the Companies Act, 1956, the Reserve Bank may, at any time, cause an inspection to be

made of any associate enterprise of a banking company and its books of account by one or more of its officers or employees or other persons.

(3) The provisions of sub-section (2) and (3) of section 35 shall apply *mutatis mutandis* to the inspection under this section.

Explanation.—"associate enterprise" in relation to a banking company includes an enterprise which—

(i) is a holding company or a subsidiary company of the banking company; or

(ii) is a joint venture of the banking company; or

(iii) is a subsidiary company or a joint venture of the holding company of the banking company; or

(iv) controls the composition of the Board of directors or other body governing the banking company; or

(v) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or

(vi) is able to obtain economic benefits from the activities of the banking company".

26. As regards proposed definition of an "associated enterprises" of a banking company, the representatives of Department of Financial Services deposited as under :-

"One holding company can have many associated companies; they may also have a banking company. The point we are trying to say is that we want to avoid the risk of the holding companies seeping through the associated company into the banking company. When we have to have new banks, the regulatory machinery of RBI has to be beefed up. There is no way it can be done otherwise. RBI will find ways of doing it. It is not necessary that they add on to staff. There are very many ways in which this can be done but ultimate responsibility is only with the RBI. RBI can take a view as to how they would like to regulate the bank. So it is left to their own knowledge and experience".

27. **Considering the wide scope and amplitude proposed in the definition of "associated enterprises" of a banking company, the**

Committee would expect that RBI's regulatory machinery would be adequately beefed up in view of their expanding role and augmented functions as proposed in the Bill. However, the Committee believe that an elaborate and expansive explanation as proposed in the Clause is superfluous, as the main clause by itself ensures adequate risk management of "associated enterprises" by RBI. The Government may therefore consider omitting the Explanation to Clause 10 of the Bill. Further, any reference to the Companies Act in the Bill as in the above Clause, should be considered in harmony with the amended Companies Bill being introduced in Parliament after incorporating the recommendations of this Committee.

(E) Supersession of Board of Directors of Banking Company-Appointment of Administrator

(Clause 11 of the Bill)

28. Clause 8 of the Banking Regulation (Amendment) Bill, 2005 had proposed for insertion of a new Section after 36AC of the Banking Regulation Act, 1949 as follows :

“(2) The Reserve Bank may, on supersession of Board of Directors of the Banking company under sub-section (1), appoint an Administrator for such period as it may determine.

(5) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in the discharge of his duties”.

29. The Standing Committee on Finance in 26th Report (14th Lok Sabha) on the Bill had made their recommendation as reproduced below :

“Though the Ministry has informed that selection of Administrator would be from persons having experience in law fiancé, banking, administration or accountancy, the Committee feels that the qualifications required to be met should be confined to experience in the fields of law, finance, banking and accountancy only and no bureaucrat should be chosen for the assignment. **The Committee, accordingly, recommends that appropriate changes be made in the provisions to indicate the qualifications of the administrator**”.

30. The Ministry of Finance (Department of Financial Services) have submitted that the recommendation of the Committee was accepted and consequently the following provisions have been proposed in the current Bill in **sub-clause (2) of Clause 11** of the Bill which reads as below :

“(2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy”.

31. The Committee find that the Ministry have not wholly accepted their recommendation made in their Report on the Banking Regulation (Amendment) Bill, 2005 on the qualifications to be prescribed for the Administrator to be appointed by the RBI in consultation with Central Government on supersession of the Board of Directors of the banking company. The Committee would thus reiterate that no serving or retired officer of the Central Government or a State Government should be considered for appointment as Administrator. Suitable amendments may therefore be carried out in sub-clause (2) of Clause 11 of the Bill accordingly.

32. While broadly endorsing the proposals contained in the Bill as measures to facilitate growth with regulation in banking sector, the Committee would like to emphasise that the recent failures of some major private banks internationally and the lessons learnt from them should not be lost sight of, while formulating the new policy on banking licences as per the mandate proposed in the Bill. The Committee would like the stability of the banking system to be preserved, while nurturing growth and development of the banking sector as a whole. Key issues and concerns such as banking penetration, coverage and financial inclusion should remain paramount and the entire banking industry including banks in the private sector should be clearly mandated to achieve the desired objectives in this regard.

33. As amendments are being proposed by Government frequently in banking law covering different aspects at different points of time, the Committee would recommend that the Government, instead of bringing piecemeal amendments, should consider formulating an integrated modern banking law for the country, which will be comprehensive and will consolidate all related provisions and aspects of banking presently dispersed in different statutes. Such an integrated and holistic law will also be in line with the proposed legislation in other areas like the Direct Taxes Code and the Companies Bill. Employee-friendly measures like introduction of Employee Stock Options (ESOPs), deterrent safeguards against 'willful default' by a borrower in repayment of loans and such other

fresh and forward-looking proposals reflecting emerging realities, may be considered for inclusion in the integrated banking law.

**New Delhi;
09 December, 2011
18 Aghrayana, 1933(Saka)**

**YASHWANT SINHA,
Chairman,
Standing Committee on Finance**

MINUTES OF THE TWENTIETH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Thursday, the 14th July, 2011 from 1100 hrs to 1530 hrs.

PRESENT

Shri Yashwant Sinha – **Chairman**

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Mangani Lal Mandal
7. Shri G.M. Siddeshwara

RAJYA SABHA

8. Shri S.S. Ahluwalia
9. Shri Raashid Alvi
10. Shri Vijay Jawaharlal Darda
11. Shri Piyush Goyal
12. Shri Moinul Hassan
13. Shri Satish Chandra Misra
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A. K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary
4. Shri Kulmohan Singh Arora – Under Secretary

Part I

(1100 hrs. to 1145 hrs.)

2.	XX	XX	XX	XX
	XX	XX	XX	XX.

Part II

(1200 hrs. to 1330 hrs.)

WITNESSES

3. XX XX XX XX
 XX XX XX XX.

The witnesses then withdrew.

Part III

(1400 hrs. to 1530 hrs.)

WITNESSES

Ministry of Finance (Department Of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Alok Nigam, Joint Secretary

Reserve Bank of India (RBI)

4. Shri P.R. Ravimohan, CGM
5. Shri A. Unnikrishnan, Jt. Legal Advisor

Indian Banks' Association (IBA)

6. Shri M.R. Umerji, Chief Legal Advisor, IBA

4. The Committee heard the representatives of Ministry of Finance (Department of Financial Services) in connection with examination of 'the Banking Laws (Amendment) Bill, 2011'. The major issues discussed during the briefing included, exemption of banking company from the scrutiny of Competition Commission of India (CCI), removal of the existing restriction of voting rights of all shareholders of the banking companies, rationale for establishment of Depositor Education and Awareness Fund (DEAF), regulation of acquisition of shares or voting rights etc. The Chairman directed the representatives of Ministry of Finance (Department of Financial Services) to furnish replies to the points raised by the Members during the discussion at an early date.

A verbatim record of the proceedings was kept.

The witnesses then withdrew

The Committee then adjourned

MINUTES OF THE TWENTY-SECOND SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Friday, the 29th July, 2011 from 1100 hrs to 1715 hrs.

PRESENT

Shri Yashwant Sinha – **Chairman**

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Dr. Kavuru Sambasiva Rao
9. Shri Manicka Tagore

RAJYA SABHA

10. Shri S.S. Ahluwalia
11. Shri Raashid Alvi
12. Shri Moinul Hassan
13. Shri Satish Chandra Misra
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A. K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary
4. Shri Kulmohan Singh Arora – Under Secretary

Part I

(1100 hrs. to 1130 hrs.)

2. The Committee took up the draft report on the ‘the Banking Laws (Amendment) Bill, 2011’ for consideration and adoption. As some Members desired more time to consider and formulate their views on the draft report, the Committee decided to postpone the adoption of the draft report.

Part II
(1130 hrs. to 1300 hrs.)

WITNESSES

3. XX XX XX XX
XX XX XX XX.

The witnesses then withdrew.

Part III
(1400 hrs. to 1715 hrs.)

WITNESSES

4. XX XX XX XX
XX XX XX XX.

The witnesses then withdrew.

WITNESSES

5. XX XX XX XX
XX XX XX XX.

A verbatim record of the proceedings was kept.

The witnesses then withdrew

The Committee then adjourned

Minutes of the Sixth sitting of the Standing Committee on Finance

The Committee sat on Thursday, the 08th December, 2011 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Harishchandra Deoram Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Chandrakant Khaire
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Dr. Kavuru Sambasiva Rao
10. Shri Rayapati S. Rao
11. Shri Magunta Sreenivasulu Reddy
12. Shri G.M. Siddeswara
13. Shri Yashvir Singh
14. Shri R. Thamaraiselvan
15. Dr. M. Thambidurai

RAJYA SABHA

16. Shri S.S. Ahluwalia
17. Shri Raashid Alvi
18. Shri Vijay Jawaharlal Darda
19. Shri Moinul Hassan
20. Shri Satish Chandra Misra
21. Shri Mahendra Mohan
22. Dr. Mahendra Prasad
23. Dr. K.V.P. Ramachandra Rao
24. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A. K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary

2. The Committee took up the following draft Reports for consideration and adoption:-

- (i) The Insurance Laws (Amendment) Bill, 2008;
- (ii) The National Identification Authority of India Bill, 2010; and
- (iii) The Banking Laws (Amendment) Bill, 2011.

3. The Committee adopted the above draft reports with some minor modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

The Committee then adjourned

NOTE OF DISSENT

Shri Moinul Hassan, MP

Respected Sir,

I suggest that note of dissent may please be recorded in the Standing Committee draft report on the Banking Laws (Amendment) Bill, 2011 at least against the following sections of the Bill:

Section 2 of the Bill that seeks to exempt banks from Competition Commission of India as this will pave the way for unrestricted merger of banks and resultant closure of bank branches but need of the hour is opening of more branches to cover 74000 habitats with more than 2000 population having no branch of any bank.

Section 3 of the Bill that seeks to include securities issued by private corporate within the definition of 'approved securities'. Banks' investment in securities represent hard earned savings of common people and that should not be allowed to be utilized by private corporate as this will expose people's money to unwarranted risks.

Section 4 of the Bill is intended to allow proportionate voting right to FDI in case of private banks. This amendment, if passed, will allow any foreign investor to take over any Indian private bank. Similarly section 5 of the Bill has to be objected as this section is linked with the proposal under section 4.

Sections 16(f) and 17(f) of the Bill seek to increase the limit of voting right of private share holders in public sector banks from existing 1% to 10%. This is a very dangerous proposal against maintaining public sector character of public sector banks as the government will not stop here and it will move for proportionate voting right for private share holders in public sector banks in future. In fact, Indian Banks Associations (IBA) has already recommended to the government for that.

With regards,

Sd/-
(MOINUL HASSAN)